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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

523 BURLINGAME AVE., LLC,

Plaintiff and Respondent,

v.

GOLDEN AGE CONVALESCENT
HOSPITAL, INC.,

Defendant and Appellant.

H045392

(Santa Cruz County
Super. Ct. No. 17CV02337)

Defendant Golden Age Convalescent Hospital, Inc. (Golden Age) appeals from a judgment and order entered after a court trial of an unlawful detainer action that awarded damages and possession of property to 523 Burlingame Ave., LLC (Burlingame).

Golden Age argues that the trial court wrongfully deprived Golden Age of its constitutional right to a jury trial and committed a variety of other procedural errors.

Finding no error, we affirm the judgment and order.

I. FACTS AND PROCEDURAL BACKGROUND

Golden Age was a nursing facility located at 523 Burlingame Avenue, Capitola, California (the property). Burlingame purchased the property on July 29, 2016, in a foreclosure sale. On September 8, 2017, Burlingame filed an unlawful detainer complaint against Golden Age seeking possession of the property, damages, attorney's

fees, and costs. Burlingame alleged that the damages would exceed \$25,000 on the date of the judgment. On September 13, 2017, Golden Age filed an answer, which did not request a jury trial.

On October 2, 2017, Burlingame filed a request to set the case for trial. On October 12, 2017, the clerk of the trial court mailed an unsigned “Clerk’s Notice of Court Trial” to both parties that stated, “You are hereby notified that the above matter is calendared for court trial on 10/20/2017 at 8:30 am.” The notice also indicated, “If you want your matter reported, you must provide your own court reporter.” The trial court’s “case summary” contains an entry for October 10, 2017, that states, “Court Trial-Short Cause Notice Sent.” However, no copy of a trial notice sent on October 10 appears in the record on appeal.

On October 18, Golden Age electronically submitted to the trial court a “notice of jury fee deposit.” Other than this notice, the record does not contain any demand by Golden Age for a jury. Golden Age did not file in the trial court a written request either for continuance of the trial or for relief from its failure to timely submit the jury fees.

On October 20, the day set for trial, counsel for Burlingame was present. Counsel for Golden Age did not appear but instead sent an attorney who “specially appear[ed].” Neither party provided a court reporter. The attorney appearing for Golden Age requested a continuance of the trial. Burlingame opposed the request.

The record on appeal does not include a transcript of the October 20 hearing. The minute order states in part, “After careful evaluation of CCP 631(f)4 and CCP 631(f)5, the Court finds that Defense has failed to [show] a [¶] Demand for Jury[,] and Jury Deposit was not timely posted. [¶] Request for Jury Trial is denied. [¶] Request for continuance is denied. [¶] This matter proceeds by way of Short-Cause Court Trial.”

The trial court conducted a court trial that same day. After receiving oral and written testimony, the trial court found in favor of Burlingame. The minute order indicates, “Judgment ordered as follows: [¶] The Court finds a valid notice was served.

[¶] Court orders possession of the premises to Plaintiff. [¶] A Writ of Possession may issue. [¶] Lease agreement is forfeited. [¶] Interest/damages is \$20,533.48 [¶] Costs are \$555.26 [¶] Attorney Fees are \$15,000.00 [¶] Total Judgment is \$36,088.74.” The trial court signed and filed a written Judgment prepared by Burlingame.

On November 3, 2017, Golden Age filed a motion under Code of Civil Procedure section 473¹ to set aside the trial judgment and to set a new trial.² With respect to the merits of the unlawful detainer case, Golden Age stated that it had filed an action challenging Burlingame’s ownership of the property that should have been consolidated with the unlawful detainer matter; Burlingame’s counsel committed an ethical violation when he served the unlawful detainer complaint; and Burlingame should have provided Golden Age a 60-day rather than a 30-day eviction notice. With respect to the trial conducted on October 20, Golden Age stated that its counsel, Francisco Aldana, “was ill and was unable to appear . . . [t]his was the reason appearance counsel was unable to reach Mr. Aldana on October 20, 2017.” In support of the motion, Aldana filed a declaration stating, “On October 19, 2017, and for two days after, I was ill with a fever.” The Aldana declaration also stated, “I caused my office to secure an appearance attorney to request a continuance to be allowed to proceed to jury trial.” The motion did not include a declaration from Aldana’s physician or any other information supporting Aldana’s assertion of illness.

The motion to set aside the trial judgment argued, “It was impossible for [Golden Age] to give notice of a jury request and/or to post jury fees more than five days prior to the trial.” Aldana’s declaration stated that he “did not get the October 12, 2017, dated Clerk’s Notice of Court Trial until October 17, 2017, and I could not request a jury trial or post jury fees with more than 5 days before trial. [¶] I posted jury fees on October 18, 2017.” Neither the motion nor any of the accompanying declarations asserted any error

¹ All further statutory references are to the Code of Civil Procedure.

² Golden Age also sought a stay of enforcement of the judgment.

on the part of Golden Age or Aldana. Burlingame opposed the motion to set aside the trial judgment.

On November 21, 2017, the trial court issued its tentative ruling denying the motion.³ The tentative ruling stated in relevant part, “Absent a straightforward admission of fault by defense counsel defendant cannot obtain relief under the mandatory provision of CCP §473. . . . Mr. Aldana’s declaration attempts to justify his conduct, and does not constitute a straightforward admission of fault. Defendant has failed to demonstrate excusable neglect to support discretionary relief under CCP §473. Defendant was able to post jury fees at any time after the complaint was filed on September 8, 2017, and the untimely posting of jury fees two days before trial was not a reasonable basis for defense counsel to assume that a trial continuance would be granted, and to fail to have Defendant present and an appearance made by an attorney prepared to try the action. Defendant has also failed to demonstrate a meritorious defense.”

The trial court heard argument on the motion to set aside the judgment on November 21, 2017. The record on appeal does not include a reporter’s transcript of the hearing. The minute order states, “The Court adopts its tentative ruling. The Motion to Set Aside Judgment is Denied.” The trial court signed and filed a written order prepared by Burlingame denying the motion to set aside the judgment.⁴

Golden Age timely appealed the judgment and the order denying the motion to set aside the trial judgment.

II. DISCUSSION

Although Golden Age’s precise arguments on appeal are somewhat difficult to discern,⁵ Golden Age appears to attack the judgment on three grounds: the clerk’s trial

³ We grant Burlingame’s request to take judicial notice of the tentative ruling.

⁴ The trial court also signed an order staying enforcement of the writ.

⁵ For example, the introduction to Golden Age’s opening brief asserts that the trial court “erroneously [held] Appellant in violation of the California Rules of Court,” but it

notice of October 12 was void because it was mailed fewer than 10 days before trial, the trial court erred in its ruling that Golden Age had waived its right to jury trial, and the trial court improperly denied Golden Age's request to continue the trial because defense counsel was ill on the day of trial. With respect to the order denying the motion to set aside the judgment, Golden Age argues the same grounds of error.

Before proceeding to the merits of the case, we observe that we have jurisdiction over this appeal even though it arises from an unlawful detainer action. Burlingame's complaint sought damages over \$25,000 and was therefore properly filed as an "unlimited" civil case. (§ 88; *Coyne v. De Leo* (2018) 26 Cal.App.5th 801, 811.) Courts of appeal have jurisdiction to hear appeals from such judgments. (§§ 85, 88, 904.1.)

Having confirmed our jurisdiction, we turn first to Golden Age's arguments against the judgment and then examine its contentions with respect to the trial court's order on the motion to set aside the trial judgment.

A. The Judgment

1. The Clerk's Trial Notice

Golden Age argues that the clerk's trial notice of October 12 was deficient because it failed to give Golden Age the statutorily required 10 days' notice of trial. Section 594, subdivision (a) (hereafter section 594(a)) states that "In superior courts either party may bring an issue to trial or to a hearing, and, in the absence of the adverse party, unless the court, for good cause, otherwise directs, may proceed with the case and take a dismissal of the action, or a verdict, or judgment, as the case may require; provided, however, if the issue to be tried is an issue of fact, proof shall first be made to the satisfaction of the court that the adverse party has had . . . five days' notice of the trial in an unlawful detainer action as specified in subdivision (b)." (§ 594, subd. (a).)

makes no argument on this point and provides no citation to the record of any such ruling.

Section 594, subdivision (b) (hereafter section 594(b)), in turn, provides, “In an unlawful detainer action where notice is served by mail that service shall be mailed not less than 10 days prior to the date set for trial.” Further, “[t]he time provisions of Section 1013 shall not serve to extend the notice of trial requirements under this subdivision for unlawful detainer actions.” (§ 594(b).) Therefore, section 594(b) requires that the notice of trial in an unlawful detainer action be mailed at least 10 days before the trial date.⁶

The clerk’s trial notice that appears in the record was mailed on October 12—that is, eight days before the trial date of October 20—instead of the 10 days required by section 594(b). However, Golden Age did not preserve this issue for appeal. “To preserve a claim to defective notice of a motion or other hearing, the objection must be raised at the earliest opportunity” (*In re Marriage of Obrecht* (2016) 245 Cal.App.4th 1, 13.) “Appellate courts will not consider objections that were not presented to the trial court.” (*In re Marriage of Binette* (2018) 24 Cal.App.5th 1119, 1130–1131, internal quotation marks omitted.) “A reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court. The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected. The critical point for preservation of claims on appeal is that the asserted error must have been brought to the attention of the trial court.” (*Boyle v. CertainTeed Corporation* (2006) 137 Cal.App.4th 645, 649, citation and internal quotation marks omitted (*Boyle*).)

An attorney acting for Golden Age was present on October 20, but the minute order reflects only a discussion of Golden Age’s request for a jury trial and continuance

⁶ While Golden Age correctly asserts that it was entitled to have the clerk’s notice mailed “not less than 10 days prior to the date set for trial,” it does not cite the correct statutory provision for the rule. Golden Age calculates the 10-day period by adding the five days’ notice it asserts it was due under section 594(a), to the five days that Golden Age contends must be added under section 1013, subdivision (a) when the clerk’s office sends a trial notice by mail. However, section 1013 does not apply to unlawful detainer actions. (§ 594(b); *Losornio v. Motta* (1998) 67 Cal.App.4th 110, 112.)

of the trial date. There is no indication that anyone brought potential deficiencies in the clerk's trial notice to the attention of the trial court. Golden Age's failure to raise the timing of the clerk's notice with the trial court is particularly problematic here, where the trial court's case summary reflects the sending of a trial notice on October 10—10 days before the trial date and in compliance with section 594(b). If Golden Age had raised the issue prior to trial, which it could have done as Golden Age concedes it received the clerk's trial notice on October 17, the trial court could have clarified the ambiguity in the record over when the clerk actually mailed the trial notice and decided what the impact, if any, would be on the scheduled trial date. In the absence of any such discussion in the record, Golden Age has forfeited any challenges to the judgment based upon asserted inadequacies in the clerk's notice of trial.⁷

2. Waiver of Jury Trial

Golden Age asserts that the trial court erred when it determined that Golden Age had waived its right to jury trial, and that we must therefore reverse the judgment. Whether Golden Age was entitled to a jury trial is an issue of law that we review de novo. (*Jogani v. Superior Court* (2008) 165 Cal.App.4th 901, 904.) “Unless waived, there is a right to a jury trial in an unlawful detainer matter. (Cal. Const., art. I, § 16; Code Civ. Proc., §§ 592, 1171.)” (*Kim v. De Maria* (2013) 218 Cal.App.4th Supp. 1, 4.) Erroneous denial of the right to jury trial “constitutes a miscarriage of justice and

⁷ A failure to comply with the notice requirements of section 594(a) deprives the trial court of jurisdiction to act if the party who did not receive sufficient notice is not present at the trial. (*Au-Yang v. Barton* (1999) 21 Cal.4th 958, 964.) That provision, however, applies “only when the court proceeds in the absence of the party complaining about notice.” (*Elliano v. Assurance Co. of America* (1975) 45 Cal.App.3d 170, 175.) As Golden Age appeared at the trial on October 20, the jurisdictional limitation of section 594(a) does not apply. The provisions of section 594(b), by contrast, are not jurisdictional. (*Isherwood v. Hyrosen Properties, Inc.* (1987) 194 Cal.App.3d Supp. 33, 36.)

reversible error per se without the need to demonstrate actual prejudice.” (*Munoz v. Silva* (2013) 216 Cal.App.4th Supp. 11, 15.)

“When parties elect a judicial forum in which to resolve their civil disputes, article I, section 16 of the California Constitution accords them the right to trial by jury.” (*Grafton Partners v. Superior Court* (2005) 36 Cal.4th 944, 951 (*Grafton*)). “[A]ny waiver of the inviolate right to a jury determination must occur by the consent of the parties to the cause as provided by statute. . . . [¶] The statute implementing this constitutional provision is section 631. It holds inviolate the right to trial by jury, and prescribes that a jury may be waived in civil cases only as provided in subdivision (d) of its provisions. (§ 631, subd. (a).) Subdivision (d) describes six means by which the right to jury trial may be forfeited or waived, including failure to appear at trial, failure to demand jury trial within a specified period after the case is set for trial, failure to pay required fees in advance or during trial, oral consent in open court, or written consent filed with the clerk or the court.”⁸ (*Ibid.*, italics omitted.)

The trial court found that Golden Age had waived its right to trial by jury under section 631, subdivision (f)(4) (hereafter section 631(f)(4)) and section 631, subdivision (f)(5) (hereafter 631(f)(5)). Section 631(f) provides in relevant part: “A party waives trial by jury in any of the following ways: [¶] (4) By failing to announce that a jury is required, at the time the cause is first set for trial, if it is set upon notice or stipulation, or within five days after notice of setting if it is set without notice or stipulation. [¶] (5) By failing to timely pay the fee described in subdivision (b), unless another party on the same side of the case has paid that fee.” (§ 631(f)(4) & (5).) Section 631, subdivision (b) (hereafter section 631(b)) states, “At least one party demanding a jury on each side of a

⁸ The six ways in which a party waives trial by jury described in *Grafton* as falling under section 631, subdivision (d), *Grafton, supra*, 36 Cal.4th at p. 951, appear in the current version of the statute under section 631, subdivision (f). (Compare former section 631, subdivision (d) (Stats. 2002, ch. 806, § 15) with section 631, subdivision (f) (Stats. 2012, ch. 342, § 1).)

civil case shall pay a nonrefundable fee of one hundred fifty dollars (\$150), unless the fee has been paid by another party on the same side of the case. . . . Payment of the fee by a party on one side of the case shall not relieve parties on the other side of the case from waiver pursuant to subdivision (f).” (§ 631(b).) Finally, section 631, subdivision (c)(1) (hereafter section 631(c)(1)), sets out the timing of the jury fee payment described in subdivision (b): “In unlawful detainer actions, the fees shall be due at least five days before the date set for trial.” (§ 631(c)(1).)

The jury waiver provisions of section 631(f) “are in the disjunctive.” (*McIntosh v. Bowman* (1984) 151 Cal.App.3d 357, 362.) Because we determine that Golden Age waived its right to jury by failing to timely pay the jury fees under section 631(f)(5), we do not reach the question whether the trial court correctly determined that Golden Age also waived its jury right pursuant to section 631(f)(4).

Under section 631, a party in an unlawful detainer action waives its right to a jury trial if it fails to pay the \$150 jury fee at least five days before the date set for trial. (§ 631(b), (c)(1) & (f).) “The purpose of requiring deposit of fees is to make certain that there will be time to call the jury after the fees have been posted, and to benefit the court in the orderly conduct of its business.” (*Still v. Plaza Marina Commercial Corporation* (1971) 21 Cal.App.3d 378, 387.) “When the litigant fails to deposit the jury fees required by section 631, the trial court may refuse to allow a jury trial and the litigant is not thereby deprived of a constitutional right.” (*Byram v. Superior Court* (1977) 74 Cal.App.3d 648, 650 (*Byram*).) In this case, the trial was calendared for October 20. Golden Age’s jury fees were due on or before October 15. (§ 631(c)(1).) As Golden Age did not pay its jury fees by the required date, it waived its right to jury trial under section 631(f)(5). Golden Age is therefore incorrect when it asserts the trial court deprived Golden Age of its constitutional right to a jury trial. To the contrary, Golden Age waived its jury trial right through its own actions—namely its failure to pay the jury fees by the required date.

Golden Age argues that the trial court's allegedly untimely clerk's trial notice, which it did not receive until October 17, "made it impossible for Appellant to post jury fees within a 5-day period." But Golden Age cites no authority for the proposition that the timing for the payment of jury fees under section 631(f)(5) depends on the timing of the mailing of the trial notice under section 594(b). "Appellate briefs must provide argument and legal authority for the positions taken. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 (*Cahill*), internal quotation marks omitted.) Having provided no legal authority in support of its position, Golden Age has forfeited any challenge to the trial court's conclusion that Golden Age waived its right to jury trial notwithstanding the allegedly defective trial notice.

In any event, we are skeptical of the merits of Golden Age's argument. Unlawful detainer actions proceed on an expedited schedule. By statute, unlawful detainer trials must be held "not later than the 20th day following the date that the request to set the time of the trial is made." (§ 1170.5, subd. (a).) Indeed, a treatise in the field warns, "Merely demanding a jury trial . . . is not sufficient to secure the right to a jury trial. The party demanding a jury also must post advance jury fees for the first day of trial, no later than 5 days before the date set for an unlawful detainer trial. CCP §631(b). . . . *A tenant who waits until receiving notice of the trial date . . . risks waiving the right to a jury trial.*" (2 Cal. Landlord-Tenant Practice (Cont.Ed.Bar 2d ed. 2015) §11.53, pp. 4/14-4/15, italics added.)

Golden Age could have paid its jury fees any time after Burlingame filed the complaint, and certainly by the time Golden Age filed its answer on September 13. Golden Age could also have paid its jury fees when Burlingame filed its request for trial on October 2. Payment of the jury fees on any of those dates would have comfortably

ensured that Golden Age did not waive its right to a jury trial by failing to timely pay its jury fees. That Golden Age failed to do so is not an error attributable to the trial court.

Furthermore, prior to the trial, Golden Age had available to it but failed to exercise several remedies to its jury waiver. It could have filed a motion for relief from waiver of jury trial under section 631, subdivision (g) when it realized on October 17 that it had not timely paid its jury fees.⁹ (See *Byram, supra*, 74 Cal.App.3d at p. 654 [finding the trial court abused its discretion by refusing discretionary relief for a waiver of jury trial right where “petitioner sought a jury trial throughout the proceedings and took prompt action upon receiving notice that the jury fees had not been deposited, and real parties in interest have not and did not establish that any prejudice would result from allowing a jury trial”].) In addition, Golden Age could have sought writ review in this court challenging the trial court’s denial of its request for jury trial on October 20. (*Shaw v. Superior Court* (2017) 2 Cal.5th 983, 992.)

In sum, Golden Age waived its right to a jury trial by failing to timely pay its jury fees, and it took no steps to remedy that failure before the court trial occurred. Accordingly, we reject Golden Age’s contention that the trial court wrongfully deprived it of its constitutional right to a jury trial.

3. Request for Continuance

Golden Age also challenges the trial court’s decision not to grant a continuance on the morning of trial but cites no authority for the proposition that the trial court thereby committed error. On appeal “the party asserting trial court error may not . . . rest on the bare assertion of error but must present argument and legal authority on each point raised.” (*Boyle, supra*, 137 Cal.App.4th at p. 649, citation omitted.) By failing to present argument and authority, Golden Age has waived any challenge to the trial court’s

⁹ That section provides, “The court may, in its discretion upon just terms, allow a trial by jury although there may have been a waiver of a trial by jury.” (§ 631, subd. (g).)

decision not to grant a continuance of the trial. (*Cahill, supra*, 194 Cal.App.4th at p. 956.)

B. Order Denying Motion to Set Aside the Judgment

In the trial court, Golden Age filed a motion to set aside the trial judgment under section 473, subdivision (b) (hereafter section 473(b)). That statute provides in relevant part, “The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. . . . Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney’s sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney’s mistake, inadvertence, surprise, or neglect. The court shall, whenever relief is granted based on an attorney’s affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties.” (§ 473(b).)

Golden Age appears to challenge the trial court’s denial of its motion to set aside the trial judgment under section 473(b) on the grounds that the trial court erred when it mailed the clerk’s trial notice fewer than 10 days before the trial date and when it denied Golden Age’s requests for a jury and a continuance of the trial.¹⁰

¹⁰ Based on the arguments Golden Age makes, we assume that Golden Age challenges on appeal the trial court’s denial of the order under section 473, although its brief refers to the subject of the motion to set aside as being under section “1013(a)” rather than section 473.

We first examine whether the trial court had authority to grant relief under section 473(b). Determining the applicability of section 473(b) is a task of statutory construction to which we apply de novo review. (*Huh v. Wang* (2007) 158 Cal.App.4th 1406, 1418 (*Huh*)). Section 473(b) “contains both mandatory and discretionary provisions.” (*Huh, supra*, 158 Cal.App.4th at p. 1414.) The mandatory portion “applies only to relief sought in response to defaults, default judgments or dismissals.” (*Id.* at p. 1418, citation and internal quotation marks omitted; see also *The Urban Wildlands Group, Inc. v. City of Los Angeles* (2017) 10 Cal.App.5th 993, 1000 [following *Huh* and disapproving of prior precedent taking a broader view of the mandatory portion of section 473(b)].) As Golden Age sought relief from the judgment following a trial rather than a default or dismissal, the mandatory portion of section 473(b) is inapplicable.

The discretionary portion of section 473(b) “applies to any judgment, dismissal, order, or other proceeding.” (*Huh, supra*, 158 Cal.App.4th at p. 1419, citation and internal quotation marks omitted.) It allows the trial court to “relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” (§ 473(b).) “A ruling on a motion for discretionary relief under section 473 shall not be disturbed on appeal absent a clear showing of abuse.” (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 257 (*Zamora*), citation and internal quotation marks omitted.) “[A]ll presumptions will be made in favor of the correctness of the order, and the burden of showing abuse is on the appellant.” (*People ex rel. Lockyer v. Brar* (2005) 134 Cal.App.4th 659, 663.)

The party asserting mistake under section 473(b) carries the burden of identifying his or her error justifying relief. (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1410.) “[A] party who seeks relief under [section 473] must make a showing that due to some mistake, either of fact or of law, of himself or of his counsel, or through some inadvertence, surprise or neglect which may properly be considered excusable, the

judgment or order from which he seeks relief should be reversed.” (*Kendall v. Barker* (1988) 197 Cal.App.3d 619, 623-624, citation and internal quotation marks omitted.) “[S]ection 473 has no application to judicial mistakes but only to mistake, inadvertence, surprise or excusable neglect *of the moving party*.” (*Don v. Cruz* (1982) 131 Cal.App.3d 695, 702, italics added.) “Where a party fails to show that a judgment has been taken against him through his mistake, inadvertence, surprise or excusable neglect the court may not grant relief. It has no discretion.” (*Huh, supra*, 158 Cal.App.4th at p. 1423, citation and internal quotation marks omitted.)

As the trial court noted in its tentative ruling, Golden Age did not identify any mistake by itself or its attorney. Nor does Golden Age articulate on appeal any such mistake. Any errors allegedly made by the trial court, such as the date of the mailing of the trial notice or the trial court’s denial of Golden Age’s request for jury trial, are not a cognizable basis for relief under section 473(b). (*Huh, supra*, 158 Cal.App.4th at p. 1419.) Thus, the trial court had no basis to grant relief on these grounds, and it properly denied Golden Age’s motion to vacate the trial judgment.

Golden Age also appears to assert that its attorney’s illness constituted “excusable neglect” that prevented Golden Age from filing a trial continuance request or having a properly prepared attorney represent it during the court trial. However, we find no abuse of discretion in the trial court’s denial of the motion on that basis. “The test of whether neglect was excusable is whether a reasonably prudent person under the same or similar circumstances might have made the same error.” (*Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1128, citation and internal quotation marks omitted.) “Counsel’s failure to discharge routine professional duties is not excusable, nor is counsel’s failure to properly prepare for the hearing the conduct of a reasonably prudent person.” (*Generale Bank Nederland v. Eyes of the Beholder Ltd.* (1998) 61 Cal.App.4th 1384, 1402.) “Conduct falling below the professional standard of care, such as failure to timely object or to properly advance an argument, is not therefore excusable. To hold otherwise would

be to eliminate the express statutory requirement of excusability and effectively eviscerate the concept of attorney malpractice.” (*Zamora, supra*, 28 Cal.4th at p. 258, citation and internal quotation marks omitted.) Golden Age’s counsel provided no medical documentation supporting his assertion of illness that justified his failure to be present on the day set for trial. (See *Transit Ads, Inc. v. Tanner Motor Livery, Ltd.* (1969) 270 Cal.App.2d 275, 286-288.) Golden Age’s attorney apparently did not even respond on the day of trial when the attorney appearing for Golden Age tried to contact him. The trial court implicitly found that this conduct did not constitute “excusable neglect” within the meaning of section 473(b), and we find no abuse of discretion in that conclusion.

For these reasons, we discern no error in the trial court’s order denying Golden Age’s motion to set aside the trial judgment under section 473(b).

III. DISPOSITION

The judgment and order are affirmed. Burlingame is entitled to costs on appeal.

DANNER, J.

WE CONCUR:

GREENWOOD, P.J.

GROVER, J.

523 Burlingame Ave., LLC. v. Golden Age Convalescent Hospital, Inc.
H045392